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10 2014 JAN 28 PM 2:12
11 CLERK U.S. DISTRICT COURT
12 CENTRAL DIST. OF CALIF.
13 LOS ANGELES
14 BY: _____

15 FILED

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 DON HEARNE,

19 Plaintiff,

20 vs.

21 MIDLAND CREDIT
22 MANAGEMENT, INC.; and DOES 1
23 to 10, inclusive,

24 Defendants.

25 Case No.: 8:14-cv-116 CDC-DFM

26 **COMPLAINT AND DEMAND FOR**
27 **JURY TRIAL**

28 **(Unlawful Debt Collection Practices)**

29 **Demand Does Not Exceed \$10,000**

30 **COMPLAINT**

31 **INTRODUCTION**

32 1. This is an action for actual and statutory damages brought by
33 plaintiff DON HEARNE, an individual consumer, against defendant MIDLAND
34 (hereinafter referred to as "MIDLAND" or "Defendant") for violations of the
35 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter
36 "FDCPA"), which prohibit debt collectors from engaging in abusive, deceptive,
37 and unfair practices.

VENUE AND JURISDICTION

2. Jurisdiction of this court arises under 28 U.S.C. § 1331 and § 1337.

Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

PARTIES

3. Plaintiff DON HEARNE is a natural consumer allegedly obligated to pay any debt, residing in Laguna Beach, Orange County, California 92651.

4. Defendant MIDLAND is a foreign corporation engaged in the business of collecting debt in this state, and maintains an address at 8875 Aero Drive, Suite 200, San Diego, California 92123. The principal purpose of Defendant is the collection of debts in this state and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6), and the Cal. Civ. Code § 1788.2.

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FACTS

6. Upon information and belief, within one year prior to the filing of this complaint, Defendant placed collection calls to Plaintiff, seeking and demanding payment for an alleged consumer debt owed under an account number.

7. Defendant constantly and continuously calls Plaintiff on Plaintiff's mobile telephone number from telephone number 818-633-0448 from Defendant's telephone number, 877-237-0512 to annoy him and with such frequency as to be unreasonable and to constitute harassment.

8. Defendant frequently calls Plaintiff multiple times in a single day in an effort to collect an alleged debt.

9. The natural consequences of Defendant's statements and actions were to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

COUNT I – FDCPA

10. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

11. Defendant violated the FDCPA. Defendant's violations include, but are not limited to the following:

i) 15 U.S.C. §1692d(5);

12. Section 1692d(5) states in pertinent part that:

2 A debt collector may not engage in any conduct the natural
3 consequence of which is to harass, oppress, or abuse any person in
4 connection with the collection of a debt. Without limiting the general
5 application of the foregoing, the following conduct is a violation of this
6 section:

7 ...
8 (5) Causing a telephone to ring or engaging any person in telephone
9 conversation repeatedly or continuously with intent to annoy, abuse, or
10 harass any person at the called number.

11 **COUNT II – RFDCPA**

12 13. Plaintiff incorporates paragraphs 1 – 12.

14 15. Defendant thereby violated the following provisions of the
16 RFDCPA:

17 i) Cal. Civ. Code § 1788.11(d);
18 ii) Cal. Civ. Code § 1788.11(e);
19 iii) Cal. Civ. Code § 1788.17.

20 16. Sections 1788.11(d) and (e) state in pertinent part that:

21 No debt collector shall collect or attempt to collect a
22 consumer debt by means of the following practices:

23 ...
24 (d) Causing a telephone to ring repeatedly or continuously to
25 annoy the person called; or

26 (e) Communicating, by telephone or in person, with the debtor with
27 such frequency as to be unreasonable and to constitute an harassment
28 to the debtor under the circumstances.

17. Section 1788.14(c) states in pertinent part that:

2 **No debt collector shall collect or attempt to collect a consumer debt by
3 means of the following practices:**

4 **...**
5 **(c) Initiating communications, other than statements of account, with
6 the debtor with regard to the consumer debt, when the debt collector
7 has been previously notified in writing by the debtor's attorney that
8 the debtor is represented by such attorney with respect to the
9 consumer debt and such notice includes the attorney's name and
10 address and a request by such attorney that all communications
11 regarding the consumer debt be addressed to such attorney, unless the
12 attorney fails to answer correspondence, return telephone calls, or
13 discuss the obligation in question. This subdivision shall not apply
14 where prior approval has been obtained from the debtor's attorney, or
15 where the communication is a response in the ordinary course of
16 business.**

18. Section 1788.17 states in pertinent part as follows:

15 **Notwithstanding any other provision of this title, every
16 debt collector collecting or attempting to collect a consumer debt
17 shall comply with the provisions of Sections 1692b to 1692j,
18 inclusive, of, and shall be subject to the remedies in Section 1692k
19 of, Title 15 of the United States Code. However, subsection (11) of
20 Section 1692e and Section 1692g shall not apply to any person
21 specified in paragraphs (A) and (B) of subsection (6) of Section
22 1692a of Title 15 of the United States Code or that person's
23 principal. The references to federal codes in this section refer to
24 those codes as they read January 1, 2001.**

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the Court should enter judgment in favor of Plaintiff and
25 against Defendant for:

26 (1) Statutory and actual damages;
27 (2) Attorney's fees, litigation expenses and costs of suit;
28 (3) Such other and further relief as the Court deems proper.

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2 DATED: January 24, 2014
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RESPECTFULLY SUBMITTED,

PRICE LAW GROUP APC

6 By: 

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10 G. Thomas Martin, III
11 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

11 PLEASE TAKE NOTICE that Plaintiff, DON HEARNE, demands trial by
12 jury in this action.
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Cormac J. Carney and the assigned Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

8:14-cv-00116 CJC-DFMx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

January 28, 2014

Date

By SBOURGEOIS

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) DON HEARNE		DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) COPY MIDLAND CREDIT MANAGEMENT, INC.; and DOES 1 to 10, inclusive			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.) G. Thomas Martin, III (SBN 218456) PRICE LAW GROUP, APC, (818)907-2030 15760 Ventura Blvd., Suite 1100, Encino, CA 91436		(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)			
<input type="checkbox"/> 1. U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> PTF 1 <input type="checkbox"/> DEF 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> PTF 4 <input type="checkbox"/> DEF 4		
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5		
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6		
IV. ORIGIN (Place an X in one box only.)		6. Multi-District Litigation			
<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		(Check "Yes" only if demanded in complaint.)			
CLASS ACTION under F.R.Cv.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MONEY DEMANDED IN COMPLAINT: \$ according to proof			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq					
VII. NATURE OF SUIT (Place an X in one box only).					
OTHER STATUTES	CONTRACT	REAL PROPERTY/CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument		PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment		<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act		<input type="checkbox"/> 310 Airplane	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)		<input type="checkbox"/> 315 Airplane	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input checked="" type="checkbox"/> 480 Consumer Credit			<input type="checkbox"/> Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV			<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange			<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions			<input type="checkbox"/> 340 Marine	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts			<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters			<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act			<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	
<input type="checkbox"/> 896 Arbitration			<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	
899 Admin. Procedures	REAL PROPERTY		<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 751 Family and Medical Leave Act	
	<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 368 Asbestos	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> Personal Injury Product Liability	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
FOR OFFICE USE ONLY:		Case Number: 8:14-cv-1160			

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?

Yes No

If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.

STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
<input type="checkbox"/> Los Angeles	Western
<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
<input type="checkbox"/> Orange	Southern
<input type="checkbox"/> Riverside or San Bernardino	Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action?

Yes No

If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.

If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
A PLAINTIFF?	A DEFENDANT?	
Then check the box below for the county in which the majority of DEFENDANTS reside:	Then check the box below for the county in which the majority of PLAINTIFFS reside:	
<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?

	A Los Angeles County	B Ventura, Santa Barbara, or San Luis Obispo Counties	C Orange County	D Riverside or San Bernardino Counties	E Outside the Central District of California	F Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

2 or more answers in Column C

only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. 

C.2. Is either of the following true? If so, check the one that applies:

2 or more answers in Column D

only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. 

Your case will initially be assigned to the
WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?

INITIAL DIVISION IN CACD

Enter the initial division determined by Question A, B, or C above: 

SOUTHERN

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT):



DATE: 01/27/2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))